IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: 9.10.2007

Phoolwati

Petitioner

versus

State (Union Territory of Chandigarh) and others

... Respondents

CORAM:- Hon'ble Mr. Justice Uma Nath Singh.
Hon'ble Mr.Justice Rajive Bhalla.

Present: Mr.Sanjeeva Gupta, Advocate
for the petitioner.
Mr.R.S.Cheema, Sr.Advocate, &
Mr.R.S.Rai, Sr. Advocate, with
Mr.Gautam Dutt, Advocate
for UT, Chandigarh.

UMA NATH SINGH, J.

This writ petition under Articles 226 and 227 of the Constitution of India has been filed by the mother of deceased Anil Kumar, who is alleged to have died in police custody, with the following prayers :

"(a) issue a writ of mandamus directing the respondents 1 to 5 for registration of a criminal case against respondent No.6 and others, and also for handing over the investigation qua the same to any independent investigating agency, viz CBI, under the Delhi Special Police Establishment Act, 1946;

( b ) to issue a suitable writ, order or direction especially in the nature of certiorari to quash FIR No.282 dated 11.7.2007 (Annexure P-5) lodged at PS Manimajra, Chandigarh, at the

instance of respondent No.6 being illegal, concocted and without jurisdiction, hence being void ab initio;

( c ) issue writ in the nature of mandamus, order or direction, directing respondents 1 to 6 to compensate the legal heirs of deceased (Anil Kumar);

( d ) prayer for issuance/initiating contempt proceedings against respondent No.6 for violation of Hon'ble Supreme Court's orders/directions;

( e ) exempt from filing the certified copies of Annexures P-1 to P-8 annexed with the present writ petition;

( f ) summon the police records qua the present case pursuant whereto and in furtherance whereof custodial death of Anil took place;

( g ) issue any other appropriate writ, order or direction, which this Hon'ble Court may deem just and proper, keeping in view the peculiar facts and circumstances of the case;

( h ) award the costs of the present writ petition in favour of the petitioner and against the respondents, and

( i ) during the pendency of the present writ petition, the respondents may kindly be directed to pay interim compensation to the dependents of deceased Anil, in the interest of justice, equity and fair play."

**1. A brief background of the incident :**

( a ) As per records of the case, it appears that the deceased left home on 11.7.2007for his work place. At 7.00 PM ,the same day, his family members were informed by a beat Constable that the deceased had met with

an accident. On enquiry, they were informed by the doctors of PGI, Chandigarh, that the deceased died at 5.30 PM. On further enquiry, family members of the deceased learnt that he was taken in custody on suspicion as also vide the statement of Constable Harpinder Singh No.2765/CP recorded under Section 161 Cr.P.C., who has mentioned that on the date of incident at about 12.00 PM, he left the police station for his beat in Madiwala Town, Manimajra and thereafter at about 12.30 PM, he left for his residence ( House No.5555/2, Modern Housing Complex, Manimajra), and when he was in front of House No. 5562, he met the complainant a lady Constable Smt. Surjit Kaur and constable one Shri Rajinder Kumar, a resident of the same Housing Complex, Manimajra, along with deceased Anil Kumar. He was informed that the deceased had since long been looking at the parked vehicles and was sitting near the water meter. They gave him a written complaint against the deceased and, there after, he took the deceased along to the Police Station on his scooter at about 1.00 PM. He took him to A/MHC Sukhminder Singh and informed him about suspicious circumstances, and mentioned his name as Anil Kumar and also showed him the complaint/application. The Police Constable as directed by the MHC took the deceased to SI Narinder Singh on the first floor of the police station. The constable thus handed him over to the SI a respondent herein and then left for his residence. This fact is also mentioned by HC Sukhminder Singh, Addl.MHC of Police Station, Manimajra, in his statement before the Investigating Officer on 11.8.2007 that the deceased was brought to the police station at 12.57 PM and he had directed the Constable concerned to take the deceased to the room of SI Narinder Singh on the first floor and thereafter, he was informed by HC Kanwar Pal Singh

No. 2556/CP, MHC, at about 3.00 PM that the boy had jumped from the first floor into the open space of the police station. A similar version has also been given by Constable Subhash Chander No.3608/CP and HC Kanwar Pal Singh. Further,it appears from the records that a CCTV Camera has been installed in the Police Station, Manimajra. Vide the recordings therein, at about 12.57.50 PM, the deceased was seen in blue pant and light shirt entering the inner gate of the police station with Constable Harpinder Singh, who talked to Addl.MHC Sukhminder Singh and then went up stairs with the boy. At 1.01.37 PM, the Constable went out of the police station and again returned at 1.48.10 PM ,and thereafter , again went out at 1.51.06 PM with some other person. He again returned at 5.48.05 PM. Thereafter, at 6.09.02 PM, the Constable and SI Narinder Singh went out from police station and they came back after half an hour at 6.35.28 PM Thus, movements of the deceased ,constable Harpinder Singh,and also of accused respondent Narinder Singh have been captured in the camera.

( b ) Affidavit of SSP Shri Dinesh Bhatt dated 28.8.2007 gives a further minute details about the movements of accused Narinder Singh as:

> "With regard to the recordings of CCTV Camera installed in the Police Station Manimajra in respect of SI Narinder Singh:- At 10.19.55 AM, SI Narinder Singh is seen entering the inner gate of Police Station. At 1.36 PM SI Narinder Singh comes to the Santry and then to the A/MHC, after that he went inside the Police Station. At 1.43.08 PM, SI Narinder Singh went out from the Police Station inner gate. At 4.11.01 PM, SI Narinder Singh came inside the Police Station. At 4.16.10 PM, SI

Narinder Singh went out of the Police Station. At 5.40.40 PM, SI Narinder Singh came inside the Police Station. At 6.09.02 PM, SI Narinder Singh along with C. Harpinder Singh went out from the Police Station. At 6.35.28 PM, SI Narinder Singh and C. Harpinder Singh came inside the Police Station. At 7.13.50 PM, SI Narinder Singh went out from the Police Station. At 7.22.45 PM, SI Narinder Singh came inside the Police Station. At 7.33, SI Narinder Singh went out of the Police Station. At 7.38 PM, SI Narinder Singh came inside the Police Station. At 9.53 PM, SI Narinder Singh went out from the Police Station. At 10.20 PM, SI Narinder Singh came inside the Police Station. At 10.49 PM, SI Narinder Singh went out from the Police Station."

(c ) Looking to seriousness of the incident, a magisterial inquiry was also ordered which was conducted by Sub Divisional Magistrate (South), UT, Chandigarh , an IAS officer. He has recorded incriminating findings in his report about the role of accused Narinder Singh and other police personnel which read as under:

"As per statement of SI Narinder Singh (Flag K) when he was enquiring about the whereabouts of deceased Anil Kumar, Anil Kumar went out of room of SI Narinder Singh at Ist Floor and jumped down from the verandah in front of room adjacent to the room of SI Narinder Singh. This statement was also supported by Constable Harpinder Singh (Flag L1 & L2). The witness Brahm Pal in his statement (Flag V) stated that he was

sitting in the room of SI Narinder Singh when Anil Kumar was being enquired. He also noticed deceased Anil Kumar going out of the room of SI Narinder Singh. But on perusal of record laid, finding is different from the statements of SI Narinder Singh, Const. Harpinder Singh and witness Brahm Pal.

As per points mentioned above, *it is certain that deceased Anil Kumar was in custody of SI Narinder Singh.* On perusal of CCTV Camera recording, it appears that SI Narinder Singh had gone out of Police Station at 1.43 PM (time as per On CCTV Camera recording) and came back into Police Station at 4.11 PM (time as per CCTV Camera recording). But Anil Kumar had been lifted out of PS Manimajra as per CCTV Camera recording at 3.13 PM.

Further on perusal of statements of Const. Ajit Singh (No.2743), SI Phool Singh and HC Kanwar Pal (No.2556), it appears that Narinder Singh, SI, was not in the police station at the time of falling of deceased Anil Kumar.

This clearly shows negligence and gross dereliction of duty on part of SI Narinder Singh. Anil Kumar was in his custody and SI Narinder Singh had left police station without making any provision for guarding Anil Kumar in police station. It appears that had proper provision of guarding Anil Kumar was there, this incident of falling of Anil Kumar could have been prevented."

The SDM's report is based amongst others also on the post mortem report. The PMR is reproduced hereunder:

"1.(c )(i) Post-mortem report:

"POST MORTEM LIVIDITY:

. Present throughout the body.

. Blood stains on mouth and clotted blood in nostrils.

. No specific odour from mouth.

. No sign of decomposition.

. Stitched chest-tube drainage wound 2 x 0.2cm over upper outer part of left chest, 9 cm outer and below left nipple.

INJURIES

. Reddish contusion of 6 x 2 cm present on lower outer front of left side neck, 8 cm below left angle of mandible and 6 cm outer to midline.

. Reddish contusion 5 x 3cm present over outer aspect of right wrist.

. Reddish contusion of 3.5x 2cm present over let sole 4cm below little toe.

. Contusion of 1 x .05 cm present 1cm below injury no.3.

. Reddish contusion, abrasion linear of 10 x 1cm present over outer back of left thigh vertically placed.

. Multiple reddish contusion/abrasion in an area of 9 x 1.5 cm present 5 cm inner to injury no.5 size varying from 2 x 1cm – 3 x 1.5cm

. Abrasion of 1 x0.5 cm present over upper back of abdomen, in midline.

. Reddish abrasion 4 x 2cm present over middle back of left arm

. Reddish contusion of 2.5 x1cm present over inner-back of left

wrist.

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II CRANIUM AN SPINAL CORD

xx xx xx xx

III THORAX

RIBS & CARTILAGES

. Extravasation of blood present over front of neck musculature and subcutaneous tissue.

. In the midline and also in right submandibular region extravasation of blood also present in whole of left upper chest, left lower front of chest, left upper front of abdomen.

. Few patches over middle outer of right chest.

. Few patches over upper back of chest just outer to midline, whole of lower aspect of back of left side of chest.

. Few patches over lower aspect of left side back of abdomen just outer to midline.

. Left 8$^{th}$ to 11$^{th}$ rib fractures on posterior aspect adjacent to posterior aspect of ribcage.

. Contused left pleura lacerated at fracture site with 500 ml of fluid/ blood present.

. Right pleural cavity showed 150 ml of blood (fluid & clotted.

. Left lung completely contused with superficial laceration at fracture side (lower lobe).

. Right lung showed contusion in fissures and was pale.

. Right lung 502 gm.

. Left lung 920gm.

. Heart 255gm.

. Blood stained pericardial fluid -100 ml.

. Left ventricle anterior aspect showed contusion 3 x 2cm in middle.

IV. ABDOMEN PAGE 4 P.M.No.11315

. PERITONEUM

1 litre of fluid clotted blood present in peritoneal cavity.

Extravasation of blood present in left retroperitoneal tissues more in lower aspect. Multiple mesentry contusion present at places.

MOUTH PHARYNH & OESOPHAGUS – Blood stained fluid in mouth and oesophagus

SOMATCH -Filled with greenish fluid like material 200 ml NAD

LARGE INTESTINE - Contained faecal matter in small amount NAD

LVER/GALL BLADDER - Pale

SPLEEN -Pale, lacerated on its posterior aspect, weight 175 gm

PANCREAS - NAD

KIDNEYS Right - 136gm Left – 138 gm

Pale Pale

NAD Contused

Left kidney showed contusion on superior surface.

URINARY BLADDER - 200 ml of blood stained fluid present

PROSTATE - 57 gm/ NAD

TESTIS Right – NAD Left -Contused interior surface

12 gm 13 gm

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Injury/Injuries Disease or Deformity Fractures

Left side pelvic cage showed fracture on its anterior aspect between pubic tubercle and iliopubic eminence.

Bone completely fractured through and through. Extravasation of blood present in left pelvic musculature

CAUSE OF DEATH – Haemmorhagic shock consequent to injuries described. However viscera sent for chemical analysis.

WHETHER INJURIES WERE ANTE OR POST MORTEM : Antemortem

WEAPON USED - Blunt

TIME BETWEEN DEATH & POST MORTEM EXAM- 47 hours."

1( c )(ii ) A CFSL report was also obtained to ascertain the exact cause of death of the deceased and for that purpose, the viscera of dead body was sent to CFSL, Chandigarh, for chemical examination. The CFSL report is as follows:

"Parcel No. Description

1. It contained shirt, pants, banyan and underwear of deceased, which were marked as the exhibits 1,2, 3 and 4 respectively in the laboratory.

7. Purpose of reference: For the examination and report.

8. Date(s) of examination: 12.07.2007 and 02.8.2007 to 18.8.2007.

9. Results of Examination:

From the inspection of SOC viz. Police station Manimajra Chandigarh, it has been observed that,

i ) the outer side of parapet wall of the corridor of first floor and grid wall adjoining, it bear coat of brick-red colour,

ii ) in the corner of grid wall and the parapet wall there are signs of downward thrust to the horizontal electrical conduit on the outer side,

iii ) the ground is concrete tiled in the area, and

iv) there are no stains which could be due to blood etc. on the ground in the area. From the inspection of the deceased's body and clothes at PGI Chandigarh before post mortem it has been observed that,

i ) there are signs of bleeding from the nose of the deceased,

ii) there are stains which could be due to blood/body fluids in the clothes of the deceased, and

iii) there are brick red marks in the clothes of the deceased.

From the physical examination of the deceased's clothes vide exhibits 1,2, 3 and 4 in the laboratory, it has been observed that,

i) there are brick-red marks in the regions of inner side of left upper arm, inner side of right lower arm, from upper left, front lower right and back side of right hip of exhibit-I, and

ii) there are brick red marks in the region of right back pocket, and at places in front of left upper leg and front of right let of exhibit-2.

*On the basis of the above and injuries sustained by the deceased*

*vide post mortem report it has been found that the deceased could have attempted crossing the parapet wall to get on to the grid and fallen from a height of about 15 ft to hit the ground on his left."*

*( d )* As per the averments in the writ petition, it appears that on 12.7.2007, Ved Parkash, uncle of the deceased, lodged an FIR with the SHO, Police Station, Manimajra, with a complaint to SSP, UT, Chandigarh (Annexures P-2 and P-3, respectively, to this writ petition),and the National Human Rights Commission. According to the writ petitioner, after a gap of 10 minutes, the police has recorded 3 DDRs and 1 FIR on the date of incident to cover up the shoddy and suspicious role of the police personnel and further, all the three DDRs and the FIR, appear to be the handiwork of accused SI Narinder Singh. In order to hush up the incident and to save their skin, the police personnel tried first to give it a colour of road accident at Naraingarh and then a fall from a building in Modern Housing Complex area, and thereafter a statement was made on Thursday morning, i.e., on 12.7.2007, that the deceased died of jumping from the first floor of Police Station, Manimajra, which was a complete 'U' turn for the police and an FIR was also registered against him but here also, accused Narinder Singh has been privy to all such moves. In the General Hospital in Sector 16, Chandigarh, an impression was given that the deceased fell from some tree.

( e ) It is further averred that the deceased was a well qualified promising young man. He had done 10+2 from the CBSE Board. He was conversant in computer and had also done ITI Course. He was earning around Rs.6,000-7,000/- per month by doing odd jobs. It has also been contended that respondent No.6 has been found to be responsible for death

of the deceased in police custody but the police did not take any action against him in the FIR registered against him initially under section 304A IPC,and later, under section 304 IPC. It has also been contended that the police did not take any action against respondent No.6 in the FIR registered against him initially under section 304A and later, under section 304 IPC . In support of his submissions,and particularly in the context of prayers for transferring the case to CBI and seeking compensation, learned counsel has cited various judgments of Hon'ble the Apex Court and one judgment of this court also as follows:

(1) 1980(3) SCC 70 (Raghbir Singh versus State of Haryana); (2) 1985 (1) SCC 552 (State of UP versus Ram Sagar Yadav and others); (3) 1989 (2) SCC 600 (Mohan Lal Sharma versus State of UP); (4) 1995 (4) SCC 262 (State of MP versus Shyamsunder Trivedi and others); (5) 1995 Supp (4) SCC 450 (death of Sawinder Singh Grover); (6) 1997 (1) SCC 416 (D.K.Basu Versus State of West Bengal); (7) 2003 (1) SCC 534 (Sahadevan alias Sagadewan Versus State represented by Inspector of Police Chennai); (8) 2005 (9) SCC 631 (Munshi Singh Gautam and others versus State of MP), and (9) 2006(3) SCC 178 (Sube Singh versus State of Haryana and others).

Learned counsel while placing reliance on these judgments contended that in the cases of custodial deaths and violence, Hon'ble the Apex Court has been of the view that such cases should be entrusted to an independent agency like CBI besides adequately compensating the family of the victims by directing payment of various amounts of compensation depending upon the facts and circumstances of each case.

( f ) This is also an averment in the writ petition that the directions

and mandate of judgment of Hon'ble the Apex Court in the matter of D.K.Basu versus State of West Bengal (1997(1) SCC 416) have been violated as under:-

> "( i ) Respondent No.6, SI Narinder Singh, neither prepared any memo of arrest at the time of arrest nor the same was attested by any witness, whosoever. So question of countersigning the same by arrestee (here Anil) does not arise at all.
>
> ( ii ) No friend or relative or other person known to Anil, having interest in his welfare, was informed at all (only information to the family was regarding Anil's road accident that too at about 7.00 PM), nor any diary qua the same was maintained; disclosing names and particulars of the police officials in whose custody the arrestee was.
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> ( iii ) No copy of any of the documents including the memo of arrest, referred to above, was sent to the Illaqa Magistrate for his record."

( g ) Learned counsel has referred to the amendment in Section 176 Cr.P.C. incorporated vide Amendment Act 46 of 1983 to argue that the mandate of this section was also not followed. Section 176 of the Code reads as :-

> "**176. Inquiry by Magistrate into cause of death.-** (1) when any person dies while in the custody of the police or when the case is of the nature referred to in clause (i) or clause (ii) of sub-section (3) of Section 174, the nearest Magistrate empowered to hold inquests shall, and in any other case

mentioned in sub-section (1) of section 174, any Magistrate so empowered may hold an enquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer, and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

(2) The magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case.

(3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

(4) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry."

On the other hand, learned senior counsel Shri R.S.Rai and Shri R.S.Cheema vehemently submitted that the Chandigarh Police has acted impartially and the moment, the incident came to the notice of senior police officers, accused-respondent No.6 was put under suspension and a Magisterial enquiry was ordered, and on receipt of enquiry report,and postmortem and CFSL reports,the accused respondent was arrested. Learned senior counsel further submitted that the administration also informed the

National Human Rights Commission about the incident . This is also a submission of learned senior counsel that the administration has acted dispassionately and genuinely, and thus, under the circumstances, this is not a fit case for directing CBI investigations and payment of compensation.

we have carefully considered the rival submissions and perused the case record. On a careful scrutiny of the materials before us, we find considerable force in the submissions of learned counsel for the petitioner.

In a catena of decisions on the controversies before us, Hon'ble the Apex Court has taken a consistent view that in cases of custodial death, the State would be liable to pay compensation,and the transfer of case to CBI for investigation would largely depend upon the facts and circumstances of each case. The earliest of the cases cited hereinabove by learned counsel for the petitioner is of Raghbir Singh. In that case, the police was found guilty of exercising third degree treatment causing death of the vicim in the lock up. The case came to Hon'ble the Apex Court in a criminal appeal, and the Hon'ble Court declined to interfere with the judgment of conviction and sentence recorded against the accused-police officials. The Hon'ble Court also made the following observations against the police for violations of human rights :

> "The diabolical recurrence of police torture during investigation resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new peril when the guardians of the law gore human rights to death, is disastrous to our human rights awareness and humanist constitutional order. Therefore, the State should organise special strategies to prevent and punish brutality by police

methodology in order to stamp out the vice of third degree treatment."

The second case is of Ram Sagar Yadav . That case also came up before Hon'ble the Apex Court at appellate stage. The deceased had suffered multiple injuries in police custody. Hon'ble the Apex Court while reversing the judgment of acquittal recorded by the High court restored the judgment of the trial Judge with certain adverse observations against the police in para 20 of the judgment as :

"20. Before we close, we would like to impress upon the Government the need to amend the law appropriately so that policemen who commit atrocities on persons who are in their custody are not allowed to escape by reason of paucity or absence of evidence. Police officers alone, and none else, can give evidence as regards the circumstances in which a person in their custody comes to receive injuries while in their custody. Bound by ties of a kind of brotherhood, they often prefer to remain silent in such situations and when they choose to speak, they put their own gloss upon facts and pervert the truth. The result is that persons, on whom atrocities are perpetrated by the police in the sanctum sanctorum of the police station, are left without any evidence to prove who the offenders are. The law as to the burden of proof in such cases may be re-examined by the Legislature so that handmaids of law and order do not use their authority and opportunities for oppressing the innocent citizens who look to them for protection. It is ironical that, in the instant case, a person who

complained against a policeman for bribery, was done to death by that policeman, his two companions and his superior officer, the Station House Officer. The vigilant Magistrate, Shri R.C. Nigam, deserves a word of praise for dutifully recording the dying declaration of the victim, which has come to constitute the sheet-anchor of the case of the prosecution."

In the third judgment in the case of Mohan Lal Sharma, the Court referred the matter to CBI for thorough and detailed investigation in a writ petition with direction that report be submitted to the Chief Secretary of the State for appropriate action and a copy of the report was directed to be submitted to Hon'ble the Apex Court for necessary follow up action. In that case also, there was a Magisterial enquiry and a counter affidavit was filed by the Senior Superintendent of Police, Agra, which in substance were found to follow the lines of the subordinate police officials. The court was not satisfied with the Magisterial enquiry report as some important aspects of the case were not addressed in the enquiry report. In the judgment of Shyamsunder Trivedi and others, the Hon'ble Court in a criminal appeal by the State of M.P., against the order of acquittal, reversed the judgment of the High Court, and ruled that the police officials alone can explain the circumstances, in which a person in their custody dies. The court also took notice of presence of police officials at Police Station during the relevant time. The Court convicted the Police Sub Inspector only under Sections 304 Part-II/34 IPC and sentenced him to the period already undergone because of long lapse of time, apart from directing him to pay a fine of Rs.50,000/- and the rest of the accused were asked to pay Rs.20,000/- each. In the case of Sawinder Singh Grover, Hon'ble the Apex Court took up the matter suo

motu under Article 32 of the Constitution and on an enquiry report submitted by an Additional District & Sessions Judge, directed the CBI to lodge an FIR and initiate criminal proceedings against all the persons named in the report. The Hon'ble Court in another judgment (though not cited herein) reported in 2000(3) SCC 521 (Ajab Singh versus State of UP), in a criminal writ petition, directed the CBI to register a case and investigate into the circumstances leading to death of the deceased. The deceased was in judicial custody and while in jail, he was removed to a hospital, where he died. However, the postmortem report disclosed that he had died of shock and haemorrhage due to anti mortem injury. The Court was not satisfied with the explanation of jail and police authorities. Hence, the Hon'ble Court directed the State to pay the petitioners a compensation of Rs.5.00 lacs within 3 months. In yet another case in the matter of Sahadevan alias Sagadewan, the matter came up before Hon'ble the Apex Court in a criminal appeal. The Hon'ble Court dismissed the appeal against the judgment of conviction and sentence filed by the accused and made the following observations:-

> "26. Before concluding, we think it appropriate to refer to some of the observations of this Court in a case akin to the facts of the present case- that is the case of Bhagwan Singh V. State of Punjab which appropriately refers to the duties of the police officers and the consequences of their act which may have a bearing on the facts of this case: (SCC P.255, paras 7-8)
>
> > "7. A case cannot be thrown out merely on the ground that the dead body is not traced when the other evidence clinchingly establishes that the deceased met his death at

the hands of the accused. It may be a legitimate right of any police officer to interrogate or arrest any suspect on some credible material but it is needless to say that such an arrest must be in accordance with the law and the interrogation does not mean inflicting injuries. It should be in its true sense and purposeful namely to make the investigation effective. Torturing a person and using third-degree methods are of medieval nature and they are barbaric and contrary to law. The police would be accomplishing behind their closed doors precisely what the demands of our legal order forbid. In Dagdu v. State of Maharashtra this Court observed as under: (SCC P. 92, para 88)

> '… The police, with their wide powers, are apt to overstep their zeal to detect crimes and are tempted to use the strong arm against those who happen to fall under their secluded jurisdiction. That tendency and that temptation must in the larger interest of justice be nipped in the bud.'

8. It is a pity that some of the police officers, as it has happened in this case, have not shed such methods even in the modern age. They must adopt some scientific methods than resorting to physical torture. If the custodians of law themselves indulge in committing crimes then no member of the society is safe and secure. If police officers who have to provide security and

protection to the citizens indulge in such methods they are creating a sense of insecurity in the minds of the citizens. It is more heinous than a gamekeeper becoming a poacher."

In the case of Munshi Singh Grover ( in a criminal appeal) ,the Hon'ble Court was pleased to dismiss the appeal of the appellants and made the following observations about police atrocities in custody:-

"3. If it is assuming alarming proportions, nowadays, all around it is merely on account of the devilish devices adopted by those at the helm of affairs who proclaim from rooftops to be the defenders of democracy and protectors of people's rights and yet do not hesitate to condescend behind the screen to let loose their men in uniform to settle personal scores, feigning ignorance of what happens and pretending to be peace-loving puritans and saviours of citizens' rights.

4. Article 21 which is one of the luminary provisions in the Constitution and is a part of the scheme for fundamental rights occupies a place of pride in the Constitution. The article mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law. This sacred and cherished right i.e. personal liberty has an important role to play in the life of every citizen. Life or personal liberty includes a right to live with human dignity. There is an inbuilt guarantee against torture or assault by the State or its functionaries. Chapter V of the Code of Criminal Procedure, 1973 (for short "the Code") deals with the powers

of arrest of persons and the safeguards required to be followed by the police to protect the interest of the arrested person. Articles 20 (3) and 22 of the Constitution further manifest the constitutional protection extended to every citizen and the guarantees held out for making life meaningful and not a mere animal existence. It is, therefore, difficult to comprehend how torture and custodial violence can be permitted to defy the rights flowing from the Constitution. The dehumanizing torture, assault and death in custody which have assumed alarming proportions raise serious questions about the credibility of the rule of law and administration of the criminal justice system. The community rightly gets disturbed. The cry for justice becomes louder and warrants immediate remedial measures. This Court has in a large number of cases expressed concern at the atrocities perpetrated by the protectors of law. Justice Brandeis's observation which has become classic is in the following immortal words:

> Government as the omnipotent and omnipresent teacher teaches the whole people by its example, if the Government becomes a lawbreaker, it breeds contempt for law, it invites every man to become a law unto himself. (In US p. 485, quoted in at p. 659.)

5. The diabolic recurrence of police torture results in a terrible scare in the minds of common citizens that their lives and liberty are under a new and unwarranted peril because the guardians of the law destroy the human rights by custodial

violence and torture invariably resulting in death. The vulnerability of human rights assumes a traumatic torture when functionaries of the State, whose paramount duty is to protect the citizens and not to commit gruesome offences against them, in reality perpetrate them. The concern which was shown in Raghbir Singh case more than two decades back seems to have fallen on deaf ears and the situation does not seem to be showing any noticeable change. The anguish expressed in Gauri Shanker Sharma v. State of U.P., Bhagwan Singh v. State of Punjab, Nilabati Behera v. State of Orissa, Pratul Kumar Sinha v. State of Bihar, Kewal Pati v. State of U.P., Inder Singh v. State of Punjab, State of M.P. v. Shyamsunder Trivedi and by now celebrated decision in D.K. Basu v. State of W.B. seems not even to have caused any softening of attitude in the inhuman approach in dealing with persons in custody.

6. Rarely in cases of police torture or custodial death, direct ocular evidence is available of the complicity of the police personnel, who alone can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues- and the present case is an apt illustration- as to how one after the other police witnesses feigned ignorance about the whole matter.

XX XX XX

10. It is the duty of the police, when a crime is reported, to

collect evidence to be placed during trial to arrive at the truth. That certainly would not include torturing a person, be he an accused or a witness to extract information. The duty should be done within the four corners of law. Law- enforcers cannot take law into their hands in the name of collecting evidence."

Again in the case of Sube Singh (supra), Hon'ble the Apex Court has held that the courts can award compensations against the State in custodial death matters and the quantum of compensation would depend upon the facts and circumstances of each case. Moreover,the Hon'ble Court has also suggested certain emergent steps in para 49 of the judgment to prevent custodial violence, which reads as under:-

"49. Custodial violence requires to be tackled from two ends, that is, by taking measures that are remedial and preventive. Award of compensation is one of the remedial measures after the event. Effort should be made to remove the very causes, which lead to custodial violence, so as to prevent such occurrences. Following steps, if taken, may prove to be effective preventive measures:

(a) Police training should be reoriented, to bring in a change in the mindset and attitude of the police personnel in regard to investigations, so that they will recognize and respect human rights, and adopt thorough and scientific investigation methods.

(b) The functioning of lower level police officers should be continuously monitored and supervised by their superiors to prevent custodial violence and ensure

adherence to lawful standard methods of investigation.

(c) Compliance with the eleven requirements enumerated in D.K. Basu should be ensured in all cases of arrest and detention.

( d ) Simple and foolproof procedures should be introduced for prompt registration of first information reports relating to all crimes.

(e) Computerisation, video-recording and modern methods of record maintenance should be introduced to avoid manipulations, insertions, substitutions and antedating in regard to FIRs, mahazars, inquest proceedings, post-mortem reports and statements of witnesses, etc. and to bring in transparency in action.

(f) An independent investigating agency (preferably the respective Human Rights Commissions or CBI) may be entrusted with adequate power, to investigate complaints of custodial violence against police personnel and take stern and speedy action followed by prosecution, wherever necessary.

The endeavour should be to achieve a balanced level of functioning, where police respect human rights, adhere to law, and take confidence-building measures (CBMs), and at the same time, firmly deal with organised crime, terrorism, white-collared crime, deteriorating law and order situation, etc."

Learned counsel has also cited a judgment of this High Court reported in 2005(4) RCR (Crl.) 788, wherein the scope of Magisterial

enquiry under Section 176 Cr.P.C. has been discussed. It has been held that a Magisterial enquiry is a safeguard in addition to the investigation, which is to be conducted under Section 154 Cr.P.C. and not a substitute thereto. Moreover, in the instant case , the provisions of section 176 Cr.P.C. have already been followed by holding a magisterial enquiry.

A careful reading of the aforesaid judgments cited by learned counsel for the petitioner discloses that only in those cases where Magisterial enquiry report or police officers' report tried to illegally protect the subordinate police officers /authorities that a CBI enquiry was ordered and not in a case where the conducts of the investigating agency do not create any doubt (See:Ajab Singh and another supra).CBI investigation was also ordered in a case where the matter was enquired into by a judicial officer and his report indicted some police officers or any other officer exercising the same/similar powers during custodial interrogations (See: Sawinder Singh's case (supra)). In the instant case, a Magisterial enquiry was ordered after the incident and a SDM (an IAS officer) was assigned that job who on a detailed and thorough enquiry has found accused respondent No.6 Narinder Singh guilty of negligence and gross dereliction in performance of his duties by not making provision for guarding of the deceased during his stay in the Police Station between 12.57 noon to 3.00 PM on the date of the incident. On receipt of Magisterial enquiry report so also the post-mortem and FSL reports, the investigating agency of Chandigarh Police registered a case under Section 304 IPC against accused respondent No.6. Though in some of the cases referred to hereinabove, the police officers were convicted and sentenced under Section 302 IPC on the charges of custodial deaths, but in the cases of (a) Shyamsunder

Trivedi; (b) Ram Sagar Yadav, and ( c ) Munshi Singh Gautam (supra), the guilty police officers were convicted only under Section 304 Part-II IPC. In the instant case, the Magisterial enquiry so also the post mortem and forensic reports prima facie do not suggest any clear marks of custodial violence as the injuries noticed on the body of the deceased could be possible also from the alleged fall from the first floor of the Police Station. Besides, the investigation report, Magisterial enquiry report ,and the affidavits filed during the course of hearing of this writ petition by the senior police officers, like SSP, Chandigarh, have not offered any explanation in the defence of the police officer responsible for the custodial death. Moreover, a solitary instance of derelict and negligent conducts of the accused in the discharge of his duties in this episode cannot be taken to be synonymous with the image of the Chandigarh Police force, and particularly,in the absence of any motive to act in a direction to cause harm to the deceased. Bonafides of the police force are further proved from the fact that the National Human Rights Commission was immediately informed about the incident. Police Station Manimajra, where the incident took place, is equipped with a CCTV camera, which keeps on recording the ingress and egress of all the police officers present in the police station, and for that reason also, the accused police officer could not succeed in creating any alibi or wiping out material evidence about his presence or absence in the police station during the custody of the deceased. Though the accused and his subordinates appeared to be panic striken in changing their stands but it cannot be denied that the deceased was given immediate medical aid by shifting him to the General Hospital, Sector 16, Chandigarh, and then to PGI, Chandigarh. The Chandigarh Administration has placed

on record all the relevant documents connected with this case during the course of hearing of the writ petition, which may leave a very little or almost no scope for tampering with the records available till date, which may prove crucial and provide vital clues during the investigations of the case. The witnesses have already been identified and their statements have been recorded during the course of enquiry by the Executive Magistrate so also in the course of police inquiry/ investigations. Necessary incriminating articles also appear to have been seized and vital reports like the ones connected with the site of incident have also been prepared. Moreover, post-mortem report, and chemical examinations report of the viscera of the deceased have already been placed on case file of this writ petition. Thus, there would be a very little scope for the CBI to investigate into the case even if this case is entrusted to the agency for investigation. In this background, we do not see any benefit in transferring this case to CBI. Moreover, we do not propose to shut the door of this Court for future in seeking similar reliefs in the event of any deliberate attempt on the part of the prosecution/investigating agency to act against the interest of the complainant side/prosecution case. Hence, for the present, we see no reason to accept the prayer for CBI investigation which is declined. As regards the prayer for grant of compensation in the light of the aforesaid judgments of Hon'ble the Apex Court, we with agree with the submission of learned counsel for the petitioner that the family of the victim needs to be adequately compensated. In the case of Sawinder Singh Gorver*(supra),* in the year 1995, Hon'ble the Supreme Court directed an ex-gratia payment of Rs.2.00 lacs, whereas in the case of Ajab Singh (supra), in the year 2000, a compensation amount of Rs.5.00 lacs was paid . In another case reported

in 1995(1) Scale 77 (Mrs.Sudha Rasheed and others versus Union of India and others), Hon'ble the Apex Court directed payment of Rs.7.50 lacs after applying multiplier system in assessing the compensation amount. In the instant case, the deceased was aged about 21 years on the date of incident. He had done 10+2 from the CBSE Board ,and then had earned a diploma in ITI. He was also trained in computers. Moreover, it is averred in the writ petition that the petitioner was earning around Rs.6,000-7,000/- per month, thus, in this background, if we assess his income at Rs.5,000/- per month and deduct 1/3rd towards personal expenses, his monthly earning would come to Rs.3333/-. As the age of the deceased was 21 years, normally, a multiplier of 17 would apply. Thus, his total earning would come around Rs.6.80 lacs. Over and above that, his widow wife is entitled to get a consortium amount of Rs.5,000/-, and towards funeral expenses, as it was an unnatural death, the family would be entitled to get Rs.10,000/-. That apart, as the deceased was a well educated and technically qualified young man of 21 years, his future prospects cannot be ignored. Further, this has also come on records that there has been a violation of the directions of Hon'ble the Supreme Court in the matter of D.K.Basu (supra) wherein, the High courts have also been empowered to punish the contemnor/accused. Thus, taking into account the totality of circumstances including these factors, to achieve the ends of justice herein,we award an additional amount of Rs.3.00 lacs on that count. Thus, the family members of the deceased would be entitled to get a compensation of Rs.9.95 lacs, which shall be paid by the UT, Administration, Chandigarh within three months from receipt of a copy of this order to the widow and the parents of the deceased and also to other legal heirs, if any .

As the initial reactions of the U.T. Administration in this incident have been slow till the investigation was handed over to Crime Branch which gave an impression that the Administration wanted to distance itself from the episode and which created public unrest and gherao of Police Station, Manimajra, besides giving a breathing time and space to subordinate police personnel and the accused to attempt a cover-up, and further that the Administration needs to be refreshed in its memory about the mandate of the directions as contained in the judgment of D.K.Basu, so also of Sube Singh, a judgment in rem, it is being burdened with payment of the entire compensation amount. Before parting with this judgment, we wish to express our strong disapproval of the conduct of the Junior Scientific Officer Shri Durga Parshad, CFSL, Chandigarh, who has given an unsolicited opinion as to the cause of death in the end of the forensic examinations report (Pp.11-12 in italics).

In the premises discussed herein above, we partly allow this writ petition to the extent as directed above. However,we clarify that the observations made and the conclusions arrived at hereinabove are merely a tentative view for the purpose of adjudication of limited reliefs as sought in this writ petition and shall in no case be taken as an expression of our final opinion about this case lest it may cause prejudice to the interest of the parties to the lis.

A copy of this order be given dasti.

( UMA NATH SINGH )
JUDGE

9.10.2007 ( RAJIVE BHALLA )
Pk JUDGE
Whether to be referred to Reporter? Yes/No